Supreme Court, U.S.
FILED
JAN 21 2000
CLERK

No. 99-1098

IN THE

Supreme Court of the United States

MICHAEL BARTH,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS; TOWNSHIP OF BERNARDS; BERNARDS TOWNSHIP SEWAGE AUTHORITY; BERNARDS TOWNSHIP BOARD OF HEALTH; BERNARDS TOWNSHIP MUNICIPAL COURT; J. KNOX FELTER, JR., Senior Sanitarian, Bernards Township; PETER MESSINA, P.E., P.P., Township Engineer/Planner; PEGGY WARREN, Certified Tax Collector, Bernards Township; BARBARA J. PENCE, Township Administrator; J. DOE(S), individually and in their official capacities; STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ITS COMMISSIONERS, and various New Jersey State Statutes; A.D. RUNYON OIL COMPANY; HARRY P. BELDON, Attorney at Law,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT TOWNSHIP OF BERNARDS BRIEF IN OPPOSITION ON THE INVERSE CONDEMNATION CLAIM SEWER TAX UNIFORMITY CLAIM

GEORGE A. MAURO, JR.
Counsel of Record
MAURO, SAVO, CAMERINO & GRANT, P.A.
Attorneys for Respondent Township of Bernards on the Inverse Condemnation and Sewer Tax Uniformity Issues
77 North Bridge Street
P.O. Box 1277
Somerville, New Jersey 08876
(908) 526-0707

QUESTION PRESENTED

1. As to the Respondent, Township of Bernards, whether Petitioner must exhaust state remedies before bringing an inverse condemnation action in Federal Court against a municipality in New Jersey?

2. Whether there is any basis for a claim against a local sewer tax on uniformity issues?

(It should be noted that these questions involve the Township of Bernards as represented by George A. Mauro, Jr., Esq., of Mauro, Savo, Camerino & Grant, P.A. Any other questions involving the Township of Bernards will be addressed in a separate brief through other counsel. Other questions not affecting the Township of Bernards will be addressed by other Respondents.)

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Cited Authorities	iii
Statement of Jurisdiction	1
Statutes and Constitutional Provisions Involved	1
Statement of the Case	3
Reasons for Denying the Writ	4
Summary of Argument	5
Argument	6
I. The Inverse Condemnation Claims Were Properly Dismissed For Failure To Exhaust State Remedies And The Sewer Tax Claims Were Unsupported And Further Review Of The Third Circuit Affirmance Is Not Warranted.	6
II. Petitioner's Factual Misrepresentations	10
Conclusion	10

TABLE OF CITED AUTHORITIES

Page

Cases:

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986) 8

Bloomsberg Landlords Assoc., Inc. v. Town of Bloomsberg, 912 F. Supp. 790 (M.D. Pa. 1995) 7

Cooper Hosp. v. City of Camden, 68 N.J.L. 691, 54 Atl. 419 (E & A 1903) 9

Cuzzupe v. Paparone Realty Co., 596 F. Supp. 988 (D.N.J. 1984) 8

General Motors Corp. v. City of Linden, 143 N.J. 336, 671 A.2d 560 (1996), *cert. den.* 117 S. Ct. 66 (1996) 9

Matter of Jersey Central Power & Light, 166 N.J. Super. 540, 400 A.2d 178 (App. Div. 1979) 7

Morris Hills Land v. Parsippany-Troy Hills, 40 N.J. 539, 193 A.2d 232 (1963) 7

Pappas v. Bd. Of Adjustment, 254 N.J. Super. 52, 603 A.2d 65 (App. Div. 1992), *certif. den.*, 130 N.J. 9, 611 A.2d 648 (1992) 7

Cited Authorities

	Page
Patsy v. Florida Board of Regents, 457 U.S. 496, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1976)	9
State v. Mayor of City of Paterson, 49 N.J.L. 380, 8 Atl. 113 (Sup. Ct. 1887)	9
Stern v. Halligan, 158 F.3d 729 (3d Cir. 1998) ...	6
Suitim v. Tahoe Regional Planning Agency, 520 U.S. 725, 137 L. Ed. 2d 980, 117 S. Ct. 1659 (1997)	5, 6
Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson City, 473 U.S. 172, 87 L. Ed. 2d 126, 105 S. Ct. 3108 (1985)	5, 6
Statutes:	
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291	6
42 U.S.C. § 1983	9
N.J.S.A. 20:3-29	1, 2
N.J.S.A. 20:3-30	1, 2

Cited Authorities

Page

United States Constitution:

Article I, Section 8, Clause 1 ..... 1, 3, 9

Fifth Amendment 1, 3, 9

Rules:

Federal Rule of Civil Procedure 56 ..... 4, 8

United States Supreme Court Rule 10 4

United States Supreme Court Rule 10(a) 4, 5

United States Supreme Court Rule 10(c) 4

Other Authorities:

New Jersey Constitution, Article 1 ..... 1, 7

New Jersey Constitution, Article 8 ..... 1, 2, 4, 9

Petitioner's Appendix contains the opinions below that address the inverse condemnation issue and sewer tax issue as they relate to Respondent Township of Bernards. Specifically, the opinion of the Court of Appeals of the Third Circuit, No. 99-5190, at page A2 of Petitioner's Appendix, and the opinion of the United States District Court for the District of New Jersey, Civil No. 97-2163, at page B1 of Petitioner's Appendix. These opinions are unreported.

STATEMENT OF JURISDICTION

Jurisdiction is pursuant to 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Regarding the inverse condemnation issue; United States Constitution, Fifth Amendment, taking clause; New Jersey Constitution, Article 1, Paragraph 20; N.J.S.A. 20:3-29; 20:3-30 (sections of eminent domain state statute). The sewer tax issue involves the New Jersey Constitution, Article 8, Section 1, Paragraph 1(a) and the United States Constitution, Article I, Section 8, Clause 1.

Article 1, Paragraph 20 of the New Jersey Constitution provides:

> Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

N.J.S.A. 20:3-29 provides:

> The condemnee shall be entitled to compensation for the property, and damages, if any, to any remaining property, together with such additional compensation as provided for herein, or as may be fixed according to law.

N.J.S.A. 20:3-30 provides:

> Just compensation shall be determined as of the date of the earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee.

Article 8, Section 1, Paragraph 1(a) of the New Jersey Constitution provides:

> 1. (a) Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

STATEMENT OF THE CASE

The Respondent Township of Bernards has been represented by two counsel in this matter, one for various damages claims, and herein on the inverse condemnation claim which will be addressed in this brief.

Petitioner alleged that a public road bordering his property was regraded, changing the elevation, and that this resulted in water runoff onto his property. Petitioner also alleged that a stormwater drainage system was constructed without catch basins, which also contributed to flooding on his property. He also alleged that the Township of Bernards installed pipes on his property. He contended that an unconstitutional taking without compensation had occurred. The Petition at pages five and six makes these allegations.

There is nothing in the record to indicate any action by Petitioner in state court seeking compensation for inverse condemnation, nor any other type of condemnation or eminent domain proceeding in State Court involving Petitioner and Respondent Township of Bernards.

Petitioner's inverse condemnation claim was dismissed based upon the decision that the District Court had no subject matter jurisdiction over a Fifth Amendment taking claim until the property owner has utilized the state procedure and been denied compensation. The District Court also held it had no jurisdiction to supercede state jurisdiction in condemnation procedures under the State Constitution and law.

The sewer tax issue is a claim of violation of Federal and State tax on uniformity constitutional provisions, United States Constitution, Article I, Section 8, Clause 1 and the

New Jersey Constitution, Article 8, Section 1. Petitioner has presented no cognizant support or arguments for this claim.

Petitioner's arguments for proceeding initially in Federal Court have not addressed the applicable law.

REASONS FOR DENYING THE WRIT

Petitioner's application for a writ of certiorari should be denied on the inverse condemnation and sewer tax claims against Respondent Township of Bernards under Rule 10 of the Supreme Court Rules for the following reasons:

1. The Third Circuit affirmed the District Court's granting of summary judgment in favor of the Township of Bernards, applying accepted and usual standards under F.R.C.P. 56, where as a matter of law, a property owner must exhaust available state remedies before bringing an inverse condemnation action in Federal Court, requiring no need for an exercise of the Supreme Court's power of supervision. Rule 10(a).

2. The decision of the Third Circuit was not in conflict with the decisions of other United States Court of Appeals and applied accepted law and methodology, requiring no need for the Supreme Court's power of supervision. Rule 10(a).

3. The Third Circuit has decided the issue of exhaustion of state remedies in an inverse condemnation claim in a manner consistent with existing precedent and accepted methodology and not in conflict with applicable decisions of the Supreme Court, requiring no need for the Supreme Court to settle an important issue of federal law. Rule 10(c).

4. The sewer tax claim presents no viable issue requiring the need for an exercise of the Supreme Court's power as supervision. Rule 10(a).

SUMMARY OF ARGUMENT

1. The applicable law is stated in *Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97, 87 L. Ed. 2d 126, 143-46, 105 S. Ct. 3108 (1985) and *Suitim v. Tahoe Regional Planning Agency*, 520 U.S. 725, 137 L. Ed. 2d 980, 117 S. Ct. 1659, 1665 (1997). The accepted law indicates that before there can be a federal court review of a taking claim, the property owner must make an unsuccessful effort to obtain compensation in state court or show the unavailability of such a remedy. A remedy was available to Petitioner, but he never made any effort to invoke that remedy. No constitutional, Federal or State, violations based upon tax uniformity claims have been shown regarding the sewer tax.

ARGUMENT

I. THE INVERSE CONDEMNATION CLAIMS WERE PROPERLY DISMISSED FOR FAILURE TO EXHAUST STATE REMEDIES AND THE SEWER TAX CLAIMS WERE UNSUPPORTED AND FURTHER REVIEW OF THE THIRD CIRCUIT AFFIRMANCE IS NOT WARRANTED.

Jurisdiction to the Third Circuit was pursuant to 28 U.S.C. § 1291, appeal from final decisions of the District Court.

The Petition and the Petitioner's arguments below, a pro se presentation, is somewhat confusing and not on point with the applicable law. This brief will focus solely upon the inverse condemnation issue and sewer tax issues.

The record has no indication that Petitioner has made an unsuccessful effort to obtain taking compensation in state court or that there is an unavailability of such remedy. An action for federal review of a taking claim requires an unsuccessful effort to obtain compensation in state court or the unavailability of such a remedy. *Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97, 87 L. Ed. 2d 126, 143-46, 105 S. Ct. 3108 (1985); *Stern v. Halligan*, 158 F.3d 729, 734 (3d Cir. 1998). In *Suitim v. Tahoe Regional Planning Agency*, 520 U.S. 725, 137 L. Ed. 2d 980, 117 S. Ct. 1659, 1665 (1997) the Supreme Court noted:

> if a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation

> Clause until it has used the procedure and been denied just compensation. (citation omitted)

This principle has been stated in additional precedent. In *Bloomsberg Landlords Assoc., Inc. v. Town of Bloomsberg*, 912 F. Supp. 790, 805-06 (M.D. Pa. 1995) the court indicated:

> If a state provides an adequate procedure for seeking compensation
>
> * * *
>
> . . . the property owner cannot claim a Fifth Amendment violation until the owner has invoked that procedure and been denied just compensation.
>
> The state's action is not complete in the sense of causing a constitutional injury unless or until the state fails to provide an adequate post deprivation remedy for the property loss. . . . Numerous decisions . . . have reached the same result, dismissing as not ripe for federal adjudication claims not first presented to the state courts. . . .

New Jersey provides a state remedy for a taking without just compensation, including inverse condemnation actions. N.J. Const. Art. 1, Sec. 20; *Pappas v. Bd. Of Adjustment*, 254 N.J. Super. 52, 56, 603 A.2d 65 (App. Div. 1992), *certif. den.*, 130 N.J. 9, 611 A.2d 648 (1992); *Morris Hills Land v. Parsippany-Troy Hills*, 40 N.J. 539, 557, 193 A.2d 232 (1963); *Matter of Jersey Central Power & Light*, 166 N.J. Super. 540, 400 A.2d 178 (App. Div. 1979). Federal precedent has recognized that New Jersey has such a remedy for claims of a taking without just compensation.

> . . . the Eminent Domain Statute *N.J.S.A.* 20:3-1 et. seq. also provides an appropriate post-deprivation remedy. This clearly seems to be the case. Although the statute itself does not explicitly cover inverse condemnation actions, . . . the New Jersey Courts have stated that an aggrieved landowner may bring a mandamus action to compel institution of condemnation proceedings. . . .

Cuzzupe v. Paparone Realty Co., 596 F. Supp. 988, 990 (D.N.J. 1984).

On this record, therefore, Petitioner did not present an inverse condemnation claim ripe for consideration in federal court and there was no jurisdiction on that issue. There was no genuine issue of material fact in dispute on that issue, and Petitioner Township of Bernards was entitled to a judgment as a matter of law. Summary judgment, therefore, was properly granted dismissing all of the claims alleging an unconstitutional taking in violation of federal law made against the Township of Bernards. F.R.C.P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986), and the District Court decision was properly affirmed on that issue by the Third Circuit.

Petitioner also raised an allegation of a taking without just compensation under state law. The argument, *supra*, concerning the allegations made on this issue under federal law, that is, failure to exhaust state remedies, appears equally applicable with similar claims under state law. If Federal Courts will decline to address Federal Constitutional claims of a taking without just compensation by state and local public entity defendants for failure to exhaust state remedies,

it reasonably follows that a Federal Court should not address similar claims under state law under supplemental jurisdiction, until the state law remedies are also exhausted.

Petitioner's contention that New Jersey does not have an adequate eminent domain procedure, discussed at pages 22 and 23 of the Petition, is simply not supported and contradicts the conclusions of both state and federal courts on this issue within the jurisdiction involved.

Petitioner's citation of *Patsy v. Florida Board of Regents*, 457 U.S. 496, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1976) for a proposition that exhaustion of state remedies is not required, have no application to taking claims raised under the Fifth Amendment, and refers only to 42 U.S.C. § 1983 claims.

Petitioner raises an issue of the constitutionality of a municipal sewer tax on grounds of uniformity, but cites no precedent for such a challenge. The decisions below (B19; A2) pointed out that the *United States Constitution*, Article I, Section 8, Clause 1 dealing with uniformity of taxation has no application to municipal taxation. With regard to uniformity under the New Jersey Constitution, Article 8, Section 1, the courts below pointed out that no evidence was presented that the tax is not assessed according to property value, thus being uniform. *See Cooper Hosp. v. City of Camden*, 68 N.J.L. 691, 694, 54 Atl. 419 (E & A 1903); *State v. Mayor of City of Paterson*, 49 N.J.L. 380, 8 Atl. 113 (Sup. Ct. 1887). Further, the courts below also ruled that acceptable adequate state remedies made a due process claim meritless. *See General Motors Corp. v. City of Linden*, 143 N.J. 336, 348-50, 671 A.2d 560 (1996), *cert. den.* 117 S. Ct. 66 (1996).

Accordingly, there is no reason to grant the Petition on the inverse condemnation issue or sewer tax issue. The Third Circuit's decision is consistent with Supreme Court opinions and the actual status of state law.

II. PETITIONER'S FACTUAL MISREPRESENTATIONS

With regard to the inverse condemnation issue, Petitioner states, at page 27 of the Petition, that defendants admit summary judgment should have been entered against themselves, and that they entered his property. The record does not admit that there was any taking as a factual matter. Petitioner's representation in that regard are not supported by this record.

CONCLUSION

For the foregoing reasons, the Petitioner should be denied on the inverse condemnation issue and sewer tax issue.

Respectfully submitted,

GEORGE A. MAURO, JR.
Counsel of Record
MAURO, SAVO, CAMERINO & GRANT, P.A.
Attorneys for Respondent
Township of Bernards on the Inverse
Condemnation and Sewer Tax
Uniformity Issues
77 North Bridge Street
P.O. Box 1277
Somerville, New Jersey 08876
(908) 526-0707

Supreme Court, U.S.
FILED
2001
CLERK

No. 99-1098

IN THE

Supreme Court of the United States

MICHAEL BARTH,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS; TOWNSHIP OF BERNARDS; BERNARDS TOWNSHIP SEWAGE AUTHORITY; BERNARDS TOWNSHIP BOARD OF HEALTH; BERNARDS TOWNSHIP MUNICIPAL COURT; J. KNOX FELTER, JR., Senior Sanitarian, Bernards Township; PETER MESSINA, P.E., P.P., Township Engineer/Planner; PEGGY WARREN, Certified Tax Collector, Bernards Township; BARBARA J. PENCE, Township Administrator; J. DOE(S), individually and in their official capacities; STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ITS COMMISSIONERS, and various New Jersey State Statutes; A.D. RUNYON OIL COMPANY; HARRY P. BELDON, Attorney at Law,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT PUBLIC SERVICE ELECTRIC AND GAS COMPANY

PETER M. ROMEO
Counsel of Record
WILLIAM E. FRESE
PUBLIC SERVICE ELECTRIC
AND GAS COMPANY
Attorneys for Respondent
Public Service Electric
and Gas Company
80 Park Plaza
P.O. Box 570
Newark, New Jersey 07101
(973) 430-7000

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Whether the District Court's Order of February 22, 1999 properly (a) granted summary judgment in favor of respondent PSE&G and (b) denied other relief sought by petitioner.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Public Service Electric and Gas Company, is a wholly-owned subsidiary of Public Service Enterprise Group and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statement of Case	1
A. The Subject Gas Line	1
B. Procedural Background	2
C. PSE&G's State Court Action against Petitioner	3
Reasons for Denying the Writ	5
I. The District Court Properly Found That Petitioner Has No Standing To Sue Under "Gas Pipeline" Statutes	5
II. The District Court Properly Applied The Doctrine Of *Res Judicata* To Bar Petitioner's Claims	10
III. Petitioner Has Shown No Other Basis For Reversal Of The District Court's Order Of February 22, 1999 Or Its Previous Orders	11
Conclusion	12

TABLE OF CITED AUTHORITIES

Page

Cases:

Doak v. City of Claxton, 390 F. Supp. 753 (S.D. Ga. 1975) 8, 9

Montana v. United States, 99 S. Ct. 970 (1979) ... 10

Stringer v. United States, 471 F.2d 381 (5th Cir. 1973) 11

Statutes:

N.J.S.A. 48:3-17.6 2

28 U.S.C. § 1331 5

STATEMENT OF CASE

Petitioner's Statement of the Case includes numerous misstatements of fact. Respondent Public Service Electric and Gas Company ("PSE&G") offers the following as a correct account of the facts in this case.

A. The Subject Gas Line

Petitioner Michael Barth misrepresents that the subject gas-pipe or line installed by PSE&G was in any way substandard or defective. In fact, both the "temporary" and permanent line installed near petitioner's premises were in all ways proper, safe, and permitted by the necessary authorities. Petitioner's unsupported allegation that PSE&G installed such line in violation "of the Federal and New Jersey Pipeline Safety Acts" (Pet. Br., p. 6) has been rejected by every reviewing authority to which plaintiff has made this improper assertion, including the State of New Jersey's Board of Public Utilities, New Jersey's trial and appellate courts, the Federal District Court, and the United States Court of Appeals for the Third Circuit.

In his petition, petitioner misrepresents that PSE&G "intended to destroy" plaintiff's property. Pet. Br., p. 3. In fact, PSE&G has never damaged or harmed Petitioner's property. The subject gas main installation was performed in a manner that had no deleterious effect on PSE&G's easement or petitioner's abutting land. Petitioner's allegations concerning damaged trees (*id.*) and unauthorized entry onto petitioner's property (*id.*) are also without support and in no event are claims which warrant this august Court's review.

B. Procedural Background

This case arises from petitioner's property damage and other claims against PSE& G including tort claims and claims for violation of federal and state natural gas pipeline statutes. In 1993, PSE&G and Mr. Barth began negotiations for PSE&G to purchase an approximate 10 x 40 foot parcel in a remote corner of Mr. Barth's residential property in New Jersey; the subject parcel is approximately .001 percent of petitioner's fee and is appraised at a value of $200. PSE&G, one of New Jersey's regulated gas utility companies, had determined that it was necessary to furnish natural gas to occupants living in the vicinity of petitioner's home. PSE&G required the subject parcel in order to install a permanent natural gas main to permit gas service in that general locality.

When Mr. Barth refused to negotiate in good faith for the sale of the easement, PSE&G initiated and complied with State of New Jersey statutory and regulatory requirements to begin the process of condemnation. Despite petitioner's active opposition, New Jersey's Board of Public Utilities granted to PSE&G the right to proceed in state court against Mr. Barth, concluding that the land being sought was necessary for the service, convenience, and safety of the public and met the statutory requirements of *N.J.S.A.* 48:3-17.6. PSE&G eventually was authorized in the New Jersey State's courts to condemn the subject parcel. Following such authorization, and condemnation the "temporary" gas line which was installed adjacent to the petitioner's land was removed and replaced by a permanent gas main which was installed through the subject condemned parcel in August, 1998.

On April 14, 1997, petitioner filed a Complaint in the United States District Court against, *inter alia,* PSE&G seeking damages related to the aforesaid negotiations and the installation of the said gas lines. Mr. Barth also sought injunctive relief seeking, *inter alia*, PSE&G be ordered to remove the aforesaid temporary pipeline. By Orders dated May 7, 1997 and June 18, 1996 the Honorable Anne E. Thompson, C.J.U.S.D.C., denied Mr. Barth's request for injunctive relief. On April 27, 1998, The Third Circuit entered an Order affirming such orders of the District Court. On February 22, 1999 the District Court entered an Order granting summary judgment to PSE&G (and all other defendants). On September 28, 1999 the Third Circuit Court of Appeals affirmed the District Court's granting of summary judgment to PSE&G.

C. PSE&G's State Court Action against Petitioner

In May 1997, PSE&G filed the condemnation suit against Mr. Barth before the Honorable Wilfred J. Diana, Somerset County Superior Court of New Jersey. On September 11, 1997, Judge Diana entered judgment for PSE&G appointing three disinterested commissioners to value the property. Thereafter, Mr. Barth moved for an order enjoining PSE&G from entering the property. The Court rejected Mr. Barth's application, observing that:

> [o]n September 11, 1997, this Court entered judgment for PSE&G appointing three disinterested commissioners to value the property that is the subject of this condemnation action . . . Defendant [Barth] moved for the Court's reconsideration of that order, which motion was

also denied. The commissioners have met and determined the value of the property . . .

Now, Mr. Barth has once again asked this Court to enjoin PSE&G from entering on his property. It seems Mr. Barth's basis for the request is that he does not know of a recorded easement for the property in the name of PSE&G. For the following reasons, this Court has refused to entertain the new application.

A Complaint, Declaration of Taking and Order for Payment of Money into Court were filed at the beginning of this matter. Thereafter, a hearing was held and *it was determined that PSE&G had exercised its power of eminent domain appropriately.* It is the opinion of this Court that it is at that time that PSE&G was allowed the property. However, this matter has progressed further. The commissioners have met and made a determination as to the value of the property [$200.00]. They have submitted their recommendation and they have been compensated for their services. While it appears that Mr. Barth continues to appeal every order entered in this matter, *it is clear that PSE&G has every right, title and interest in the property that they have sought to take in this matter.* As such, this Court will not entertain an application to enjoin PSE&G from entering onto property which they properly have access to. (emphasis added)

On March 8, 1999, the New Jersey Appellate Division affirmed Judge Diana's rulings.

REASONS FOR DENYING THE WRIT

Petitioner has shown no basis for this Honorable United States Supreme Court to grant certiorari to reverse the grant of summary judgment to PSE&G nor to reverse any of the orders or alleged "inactions" of the courts below. Petitioner's claim of "national importance" in this, at best, unsubstantiated property damage/trespass action, is frivolous. Further, summary judgment was properly granted because petitioner has never offered any credible proof that any of PSE&G's gas lines were in any way substandard. Finally, none of petitioner's property or constitutional rights have been impaired.

I.

THE DISTRICT COURT PROPERLY FOUND THAT PETITIONER HAS NO STANDING TO SUE UNDER "GAS PIPELINE" STATUTES

At the outset it should be noted that, with regard to petitioner's Complaint averring purported federal question jurisdiction under 28 U.S.C. § 1331, insofar as PSE&G is concerned, while petitioner alleged violation of certain federal "Pipeline Safety Acts," (*see* Complaint, *Jurisdiction*, par. 1) the District Court found that, as a matter of law, Mr. Barth did not have standing to raise such claims. With regard to the Complaint's alleged constitutional deprivation claims no such claims were directed against PSE&G but rather were alleged against certain New Jersey statutes and, as such, PSE&G takes no position herein on the validity of jurisdiction allegedly arising from the United States Constitution.